

REMARKS

In the Office Action dated 21 November, pending claims 1 through 10 and 16 were rejected. Applicant has carefully reviewed the Office Action and submits the amendments above and the remarks to follow as a full and complete response thereto.

Applicant has amended claim 1 and entered new claim 17. Claims 1 through 10 and 16 and 17 are submitted for reconsideration.

Claims 1 through 10 and 16 had been rejected under 35 USC 103(a) as obvious over the combination of USP# 4,981,468 to Benefiel et al. in view of USP# 6,283,294 to Thorball et al. Benefiel et al. is directed to a compound tube in which a "therapeutic agent 20" is positioned on an angled grid 18. The grid has a "mesh size sufficiently small to support the smallest granules of particles of therapeutic agent" (col. 7, lines 4-6). Preferably, the grid is positioned in a sleeve 26 and may be steel mesh from 140 mesh to 10 mesh (col. 7, lines 20-21). More imaginative grids are illustrated in Figs. 4 and 5.

Thorball et al. is cited for a teaching of a straw having "an inside diameter of [at] least 20 mm or 0.78 in." (Office Action, paragraph 5, citing claim 10). Firstly, claim 10 reads as follows:

10. The device of claim 1, wherein the tube has a diameter ranging from 0.2 – 200 mm and a length of 50-500 mm.
(emphasis added)

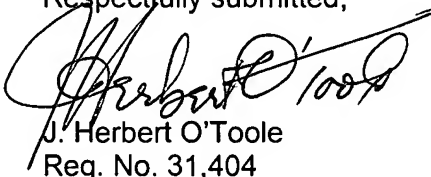
The diameter is not specified as either I.D. or O.D. Secondly, the claim is unsupported in the specification which recites at col. 3, line 13 that the tube may have a "width of 0.2-20 mm..." Absent further specification, a width would best be understood as O.D. (The term "width" is unknown in the pipe and tubing arts.) As support for the conclusion that O.D. is intended, Applicant notes that the reference refers to an "open bore 22" and an "inner tube wall 24" at col. 3, lines 3-4. Terminological differentiation would require that element 20 be different from open bore 22 and, ineluctably, an O.D. Applicant's description is unequivocally to an I.D. of 0.75 in.

Applicant notes in passing that the dimensions recited in the Thorball et al. reference seem to have been selected randomly. The lower limit of 0.20 mm corresponds to 0.008 in., or 32 gauge wire. Commercial straws do not come in either 32 gauge or 20 mm although commercial tubing having a 20 mm O.D. is available. Such tubing cannot be bent as shown in Thorball et al., Fig. 2. Applicant has amended claim 1 to specify that the device claimed is an open straw, not one containing a grid per Benefiel et al. or any of Thorball et al. inserts. A minimum wall thickness is specified, as recited in the specification at paragraph [0019].

Applicant has also entered new claim 17 which specifies, inter alia, that the beverage within the device may be removed from either end by a combination of sucking and blowing on the respective ends (and is preferably shuttled reciprocally). Such cannot be done through the mesh screen of Benefiel et al., which serves as a check-valve.

In summary, Applicant has clarified his claims to remove any ambiguity with regard to structures and has argued persuasively that the references teach neither the structure nor the operation of Applicant's popular invention. Applicant request reconsideration and favorable action thereupon.

Respectfully submitted,



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Date:

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by:

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